

1 H.220

2 Introduced by Representatives McCullough of Williston, Christie of Hartford,
3 Dakin of Chester, Frank of Underhill, Macaig of Williston,
4 Martel of Waterford, Masland of Thetford, McCormack of
5 Burlington, Poirier of Barre City, Till of Jericho, and Yantachka
6 of Charlotte

7 Referred to Committee on

8 Date:

9 Subject: Domestic relations; annulment and divorce; rights and responsibilities
10 order; best interests of the child

11 Statement of purpose of bill as introduced: This bill proposes to require the
12 Court to order shared parental rights and responsibilities and equal parent-child
13 contact provided it is in the best interests of the child.

14 An act relating to shared parental rights and responsibilities and equal
15 parent-child contact

16 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 15 V.S.A. § 665 is amended to read:

2 § 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS OF
3 THE CHILD

4 (a) In an action under this chapter, the Court shall make an order
5 concerning parental rights and responsibilities of any minor child of the
6 parties. The Court may order parental rights and responsibilities to be awarded
7 primarily or solely to one parent or divided or shared between the parents on
8 such terms and conditions as serve the best interests of the child. ~~When the~~
9 ~~parents cannot agree to divide or share parental rights and responsibilities, the~~
10 ~~Court shall award parental rights and responsibilities primarily or solely to one~~
11 ~~parent.~~

12 (1) To the extent that it is reasonable and in the best interests of the
13 child, the Court shall order shared parental rights and responsibilities and equal
14 parent-child contact, unless physical harm or significant emotional harm to the
15 child, other children, or either parent is likely to result.

16 (A) The Court shall consider granting shared parental rights and
17 responsibilities and equal parent-child contact upon a request by either parent.
18 Both parents shall be allowed an opportunity to submit a parenting plan when
19 there is a request for the Court to consider shared parental rights and equal
20 parent-child contact.

1 (B) When the Court does not award shared parental rights and
2 responsibilities and equal parent-child contact, the Court shall cite by clear and
3 convincing evidence the factors in subsection (b) of this section that make
4 shared parental rights and responsibilities and equal parent-child contact
5 unreasonable and not in the best interests of the child.

6 (2) If the Court finds a history of abuse, there shall be a rebuttable
7 presumption against awarding shared parental rights and responsibilities and
8 equal parent-child contact.

9 (3) The Court shall consider a parent's unreasonable denial of
10 continuing contact with the other parent as a significant factor in determining
11 parental rights and responsibilities. Denial of continuing contact based on a
12 just cause, such as a history of abuse, shall be deemed reasonable.

13 (4) If the Court finds a history of abuse and a parent has relocated to
14 avoid further abuse, the Court shall not consider the relocation as a factor
15 against awarding parental rights and responsibilities and parent-child contact to
16 the relocated parent.

17 (b) In making an order under this section, the Court shall be guided by the
18 best interests of the child, and shall consider at least the following factors:

19 (1) the relationship of the child with each parent and the ability and
20 disposition of each parent to provide the child with love, affection, and
21 guidance;

1 (2) the ability and disposition of each parent to ~~assure~~ ensure that the
2 child receives adequate food, clothing, medical care, other material needs, and
3 a safe environment;

4 (3) the ability and disposition of each parent to meet the child's present
5 and future developmental needs;

6 (4) the quality of the child's adjustment to the child's present housing,
7 school, and community and the potential effect of any change;

8 (5) the ability and disposition of each parent to foster a positive
9 relationship and frequent and continuing contact with the other parent,
10 including physical contact, except where contact will result in harm to the child
11 or to a parent;

12 (6) ~~the quality of the child's relationship with the primary care provider,~~
13 ~~if appropriate given the child's age and development~~ whether the
14 psychological and emotional needs and development of the child will suffer
15 due to lack of equal opportunity for active contact with and attention from
16 both parents;

17 (7) ~~the relationship of the child with any other person who may~~
18 ~~significantly affect the child~~ the interaction and relationship of the child with
19 his or her grandparents, siblings, persons cohabitating with a parent of the
20 child, any other residents of the household, or persons who may significantly
21 affect the child's best interests;

1 (8) the ability and disposition of the parents to communicate, cooperate
2 with each other, and make joint decisions concerning the children where
3 parental rights and responsibilities are to be shared or divided; ~~and~~

4 (9) ~~evidence of abuse, as defined in section 1101 of this title, and the~~
5 ~~impact of the abuse on the child and on the relationship between the child and~~
6 ~~the abusing parent.~~ evidence of abuse, including the issuance of a protective
7 order against the parent or the issuance of a court order or consent agreement,
8 the issuance of an emergency order, or a conviction for domestic assault;

9 (10) whether both parents have actively cared for the child before and
10 since separation;

11 (11) the child's wishes, taking into consideration the child's age and
12 maturity and child's ability to communicate his or her wishes;

13 (12) whether one or both of the parents agree to shared parental rights
14 and responsibilities;

15 (13) the geographic proximity of the parents; and

16 (14) whether the safety of the child, other children, or the other parent
17 will be jeopardized by awarding shared parental rights and responsibilities or
18 by unsupervised visitation.

19 (c) The Court shall not apply a preference for one parent over the other
20 because of the sex of the child, the sex of a parent, or the financial resources of
21 a parent.

1 (d) The Court may order a parent who is awarded responsibility for a
2 certain matter involving a child's welfare to inform the other parent when a
3 major change in that matter occurs.

4 * * *

5 (g) Both parents shall have access to information and documentation
6 concerning the child, including medical records, educational records, and law
7 enforcement records. The Court may limit access granted by this subsection in
8 the parental rights and responsibilities order.

9 (h) Prior to issuing an order regarding parental rights and responsibilities,
10 the Court may require the parties to participate in mediation to determine
11 whether shared parental rights and responsibilities and equal parent-child
12 contact is in the best interests of the child. The Court shall not order mediation
13 under this subsection unless it has determined that there is no history of abuse
14 and that no physical harm or significant emotional harm to the child, other
15 children, or either parent is likely to result from shared parental rights and
16 responsibilities and equal parent-child contact. The cost of mediation ordered
17 pursuant to this subsection shall be paid by the parties or as directed by
18 the Court.

1 Sec. 2. 15 V.S.A. § 665b is added to read:

2 § 665b. CONDITIONS OF PARENTAL RIGHTS AND
3 RESPONSIBILITIES ORDER

4 (a) Prior to issuing an order on parental rights and responsibilities and
5 parent-child contact pursuant to section 665 of this title, the Court may require
6 the parents to submit, individually or jointly, a proposed shared physical care
7 parenting plan. A proposed parenting plan shall address the following:

8 (1) how the parents will make decisions affecting the child;

9 (2) how the parents will provide a home for the child;

10 (3) how the child's time will be divided between the parents and how
11 each parent will facilitate the child's time with the other parent;

12 (4) arrangements for the child's expenses in addition to court-ordered
13 child support;

14 (5) how the parents will resolve major changes or disagreements
15 affecting the child, including changes that arise due to the child's age and
16 development needs; and

17 (6) any other issues the Court considers appropriate.

18 (b) The Court shall award equal parent-child contact upon the request of
19 either parent unless physical harm or significant emotional harm to the child,
20 other children, or either parent is likely to result.

1 (1) The Court may award equal parent-child contact regardless of
2 whether shared parental rights and responsibilities are awarded.

3 (2) Whenever the Court does not grant equal parent-child contact, it
4 shall give specific findings of fact and conclusions of law that awarding equal
5 parent-child contact is not in the best interests of the child pursuant to
6 subsection 665(b) of this title. The standard of proof on the issue shall be clear
7 and convincing evidence.

8 (c) If shared physical rights and responsibilities are not awarded, except in
9 cases in which the Court determines it would be unsafe for either the parent or
10 child, the parent responsible for providing primary physical care shall support
11 the other parent's relationship with the child.

12 (d) Physical rights and responsibilities awarded solely or primarily to one
13 parent do not affect the other parent's rights and responsibilities as a joint legal
14 custodian of the child. Shared legal rights and responsibilities include equal
15 participation in decisions affecting the child's legal status, medical care,
16 education, extracurricular activities, and religious instruction.

17 (e) If the parents have more than one minor child and the Court awards
18 each parent physical responsibility of one or more children, either parent may
19 request the Court to include a provision in the rights and responsibility order
20 directing the parents to allow visitation between the children. In deciding on a

1 request under this subsection, the Court shall consider whether the request is
2 reasonable and in the best interests of the children.

3 (f) When a parent awarded legal and physical rights of a child cannot act as
4 custodian or caretaker because the parent has died or has been found by a court
5 to be incompetent, the Court shall award legal rights and physical rights of the
6 child to the other parent unless the Court finds that such an award is not in the
7 child's best interests.

8 Sec. 3. 15 V.S.A. § 668 is amended to read:

9 § 668. MODIFICATION OF ORDER

10 (a) On motion of either parent or any other person to whom custody or
11 parental rights and responsibilities have previously been granted, and upon a
12 showing of real, substantial, and unanticipated change of circumstances, the
13 Court may annul, vary, or modify an order made under this subchapter if it is
14 in the best interests of the child, whether or not the order is based upon a
15 stipulation or agreement.

16 (b) Whenever a judgment for physical responsibility is modified, the Court
17 shall order a child support modification hearing to be set and notice to be given
18 to the parties. Unless good cause is shown to the contrary, the Court shall
19 simultaneously issue a temporary order pending the modification hearing, if
20 adjustments to those portions of any existing child support order or wage
21 withholding order that pertain to any child affected by the modification are

1 necessary to ~~assure~~ ensure that support and wages are paid in amounts
2 proportional to the modified allocation of responsibility between the parties.

3 (c) A final order related to parental rights and responsibilities and parent
4 child contact issued pursuant to subdivision 665(f)(1) of this title shall not be
5 subject to modification. A party may file a motion for modification of an order
6 related to parental rights and responsibilities and ~~parent-child~~ parent-child
7 contact issued pursuant to subdivision 665(f)(2) of this title only upon a
8 showing of extraordinary, real, substantial, and unanticipated change of
9 circumstances.

10 (d) In response to a motion made pursuant to this section, the Court may
11 require the parents to participate in mediation to attempt to resolve the
12 differences between the parties. The Court shall not order mediation under this
13 subsection unless it has determined that there is no history of abuse and that no
14 physical harm or significant emotional harm to the child, other children, or
15 either parent is likely to result.

16 Sec. 4. EFFECTIVE DATE

17 This act shall take effect on July 1, 2015.